APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 65)

PERSONAL INFORMATION

1. Full Name: Regina Lee Nassen

2. Have you ever used or been known by any other name? Yes If so, state name: Regina L. Igini (2000-2003)

3. Office Address: City Attorney's Office
   Tucson City Hall
   255 W. Alameda Street
   Tucson, Arizona 85701

4. How long have you lived in Arizona? 38 years What is your home zip code? 85747

5. Identify the county you reside in and the years of your residency. Pima County, since June 1986 except for one year I lived in Maricopa County while clerking for the Arizona Supreme Court

6. If nominated, will you be 30 years old before taking office? X yes □ no

   If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor? X yes □ no

7. List your present and any former political party registrations and approximate dates of each: Independent, since 2014; Democrat, ~1990 to 2014; Independent, ~1986 to ~1990

(The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)

8. Gender: Female

Race/Ethnicity: White/Caucasian

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

University of Arizona College of Law, Tucson, Arizona; J.D.
University of Northern Iowa, Cedar Falls, Iowa; B.A.

10. List major and minor fields of study and extracurricular activities.

Undergraduate Majors: Anthropology and Philosophy
Undergraduate Activities: Tutoring, Sociology; Teaching Assistant, Statistics

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

University of Arizona College of Law:

Graduated Summa Cum Laude, 3.96/4.00 GPA (Class Rank 1/146)
DeConcini McDonald Brammer Yetwin & Lacy Academic Achievement Award, Class of 1992
Order of the Coif
Summer Associate at Schwabe, Williamson & Wyatt, Portland, Oregon, Summer 1991
Academic Assistant, Prof. William Boyd, 1991-92
Arizona Law Review Note Editor, 1991-92
Arizona Law Review Outstanding Second Year Writer, 1990-91
Summer Associate at Malloy, Jones & Donahue, Tucson, Summer 1990
Jennings, Strouss & Salmon First-Year Law Student Award, 1989-90
First Year Moot Court Best Brief, Appellee, 1989-90

University of Northern Iowa:

Graduated with Highest Honors, 3.94/4.00 GPA
Purple & Old Gold Award for Academic Achievement, 1986

College of Social and Behavioral Sciences Scholarship, 1982-86

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

Supreme Court of the United States, February 2020
United States Court of Appeals for the Ninth Circuit, February 2014
United States District Court for the District of Arizona, October 1993
Arizona Supreme Court, October 1993

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? _No__ If so, explain.

b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? _No_ If so, explain any circumstances that may have hindered your performance.

14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
Tucson City Attorney's Office		
Principal Assistant City Attorney	August 2021 – Present	Tucson, AZ
Pima County		
Dep. Dir, Economic Development	March 2021 – August 2021	Tucson, AZ
Pima County Attorney's Office	Oct. 2003—March 2021	Tucson, AZ

Pima County Attorney's Office Chief Ethics Council, (Aug. 2014—Dec. 2020)
Supervising Attorney, Business & Transactions Unit (Sept. 2004—March 2021)
Assistant Chief Civil Deputy County Attorney (April 2006—Feb. 2012)
Deputy Pima County Attorney (October 2003—March 2021)

Not practicing; stay-at-home mom	May 2000—Oct. 2003	Tucson, AZ
Snell & Wilmer L.L.P., Associate	Aug. 1993—May 2000	Tucson, AZ
Arizona Supreme Court, Law Clerk	Aug. 1992—Aug. 1993	Phoenix, AZ
Schwabe, Williamson & Wyatt, Summer Associate	May 1991—Aug. 1991	Portland, OR
Molloy, Jones & Donahue, Summer Associate	May 1990—Aug. 1990	Tucson, AZ
Tucson Cooperative Warehouse, Purchaser	July 1986—July 1989	Tucson, AZ

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve. List Attached

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practice and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

- General advising and transactional practice (70%):
  - Advise elected officials and government staff regarding regulatory and legal compliance; assist with negotiating and documenting various transactions; and draft or review ordinances and resolutions.
  - Practice includes (but is not limited to)[1] the following substantive areas:
    - All aspects of real estate law and transactions
    - Government procurement and contracting and general commercial/transactional law
    - Local government law, including municipal finance law (bond law and local taxation (property and excise taxes), budgeting, and spending)
    - Constitutional law, both Federal and State
    - Public records and open meeting law
- Litigation, both at the trial court and appellate level (30%):
  - Issues typically involve the interpretation of state statutes or the Arizona Constitution

1 My practice is extremely broad, and I tend to get involved in matters throughout the office, including in areas as diverse as excise taxes, and tort law.

17. List other areas of law in which you have practiced.

I served as Chief Ethics Counsel at the Pima County Attorney's Office:

- Chaired the office's ethics committee; gave regular ethics presentations to both the Criminal and Civil Divisions; assisted with the development of office policies and procedures; and responded on behalf of the office and individual lawyers to inquiries from the State Bar

Previously, while in private practice, I also practiced in the following areas:

- Airport law, including compliance with all areas of applicable federal, state and local grant restrictions and regulations.
- Formation of various business entities including nonprofit corporations, for-profit corporations (both C and S corps), and limited liability companies.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state. None

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

I am an experienced writer and have drafted complex transactional documents, legislative documents, client explanatory memoranda, and persuasive motions and briefs. Specifically, I have drafted:

- Hundreds of contracts and related transactional documents, in both private and public practice, including intergovernmental agreements.
- Hundreds of memos (both formal and informal) to clients and client representatives analyzing legal issues, options and recommendations.
- Numerous appellate briefs, and dispositive motions in the trial court, both as principal author and as editor.
- Proposed state legislation and local code provisions.
- Proposed revisions to various ethics rules and comments intended to provide more guidance on ethics issues for government lawyers.
- Many local-government policies, procedures and ordinances.

20. Have you practiced in adversary proceedings before administrative boards or commissions? _No_

21. Have you handled any matters that have been arbitrated or mediated? _No__

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and

the party each represented; (3) a summary of the substance of each case: and (4) a statement of any particular significance of the case.

- **Tucson Police Officers Association et al. v. City of Tucson et al., Superior Court of Arizona, Pima County, C20213869**

  1. Date: This case was filed August 16, 2021. It was settled by the parties in January 2024.
  2. Counsel: See attached list.
  3. Summary:

     On Friday, August 13, 2021, the Tucson Mayor and Council, facing what they were afraid would be another fall/winter surge in Covid-19 infections, directed the City Manager to implement a Covid-19 vaccination requirement for all City employees. The policy provided for medical exemptions and religious accommodations but set a deadline by which non-exempt employees needed to be vaccinated. On Monday, August 16, my first day at the City Attorney's Office, one of the labor organizations for City employees, the Tucson Police Officer's Association ("TPOA"), filed a lawsuit seeking to enjoin implementation of the policy and obtain a declaration that the policy was unenforceable because it conflicted with several gubernatorial emergency orders, TPOA's memorandum of understanding ("MOU") with the City, and several state statutes. The Complaint was subsequently amended to add some claims related to the exemption process and to add the City's other labor organizations as plaintiffs.

     The City Attorney, Mike Rankin, and I worked on the case together. We ultimately settled the case by drafting, with input from Plaintiffs, an ordinance requiring the City Manager to meet and consult with the labor organizations before the adoption of any similar new condition of City employment. Plaintiffs agreed to dismiss their case if the ordinance was approved. It was, and the case was dismissed.

  4. Significance:

     The Covid-19 pandemic, and the response of various public jurisdictions and officials to that pandemic—as everyone who lived through it is aware—created extraordinarily strong political disagreements, with each faction convinced of the righteousness of its cause. This was one of the many legal cases around the country born of that conflict. Being able to settle the case by agreeing to a process for new conditions of City employment in the future, a process that both sides could live with, was a productive way to resolve it.

- **Pima County, et al., v. Arizona Property Tax Oversight Committee, Superior Court of Arizona, Maricopa County (Tax Court) CV2015-009739**

  1. Date: Complaint was filed August 2015. Final judgment, in favor of Pima County, was filed July 8, 2016. The defendant, as part of a post-judgment settlement, agreed not to appeal.

  2. Counsel: See attached list.

  3. Summary:

     The County sued PTOC and the State, challenging the constitutionality of a bill that shifted from the State to local jurisdictions the obligation to "back fill" a school district's property tax levy when the district's levy is reduced in order to achieve compliance with an aggregate-primary-property-tax rate cap that was adopted by voters in 1980. The County made several constitutional claims, including that the measure unconstitutionally delegated legislative authority to PTOC. The trial court granted the County's motion for summary judgment, based on that argument, and did not reach the other constitutional claims. The defendants agreed not to appeal as part of a settlement.

  4. Significance:

     Though taxing decisions are legislative in nature, I, with the assistance of outside counsel, argued on behalf of Pima County that in this instance the legislature's action crossed a number of constitutional boundaries and resulted in a truly irrational taxing scheme that was unfair to local taxpayers. Despite an uphill battle, given the natural reluctance of courts to question tax legislation, Pima County won this case convincingly enough that the State agreed as part of a settlement agreement not to appeal.

- ***Marana v. Pima County*, 230 Ariz. 142 (App. 2012)**

  1. Date: Court of Appeals opinion issued June 14, 2012; settlement agreement entered into thereafter.

  3. Counsel: See attached list.

  4. Summary:

     This case arose from the Town's termination in 2007 of a 1979 intergovernmental agreement between the Town and the County, and the Town's simultaneous attempt to annex property surrounding a County wastewater treatment plant. The Town claimed these actions would give it ownership of the treatment plant because the IGA provided that upon termination the Town would succeed to ownership of the County's non-flow-through sewers within Town limits. The County declared the area a park and refused to give its consent to the annexation under A.R.S. § 9-471(Q), which prevents annexation of a county park without the county's consent. The County filed suit to block the annexation, and the Town filed suit to obtain ownership of the treatment plant.

We were assisted by outside counsel in the trial court, but I handled the appeal. The Court of Appeals upheld the trial court's rulings in favor of the County, including finding that the County's establishment of the park was valid and the annexation therefore invalid, and that certain disputed sewers remained the property of the County. The Court also reversed the trial court as requested by the County and ruled that the Town is required to obtain voter approval under A.R.S. § 9-514 before acquiring the treatment plant, and that a ballot measure approved by Town voters in 1988 was too general to satisfy this requirement.

The Town filed a Petition for Review in the Arizona Supreme Court, to which I responded. Review was denied. We then entered into a settlement agreement finally settling all issues in the case based on the legal rulings.

5. Significance:

This case clarified that a local jurisdiction must obtain the approval of its voters before acquiring existing utility infrastructure. The County's action in challenging the Town ultimately protected the voting rights of the Town's citizens. And, in the end, the County and Town reached a reasonable resolution of their dispute.

23. Have you represented clients in litigation in Federal or state trial courts? Yes
If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: 0

State Courts of Record: 14[2]

Municipal/Justice Courts: 0

The approximate percentage of those cases which have been:

Civil: 13

Criminal: 1

The approximate number of those cases in which you were:

Sole Counsel: 0

Chief Counsel: 8

2 This includes 3 cases in which I did not represent a named party but filed an amicus brief.

Associate Counsel: 6

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: 57%

You argued a motion described above: 33%

You made a contested court appearance (other than as set forth in the above response) 50%

You negotiated a settlement:

1

The court rendered judgment after trial:

1

A jury rendered a verdict:

0

The number of cases you have taken to trial:

Limited jurisdiction court	0
Superior court	1
Federal district court	0
Jury	0

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

24. Have you practiced in the Federal or state appellate courts? Yes If so, state:

The approximate number of your appeals which have been:

Civil: 24[3]

Criminal: 1[4]

Other: [5] 1

The approximate number of matters in which you appeared:

As counsel of record on the brief: AZ 20
U.S. 1

Personally in oral argument: AZ 3
U.S. 0

25. Have you served as a judicial law clerk or staff attorney to a court? Yes If so, identify the court, judge, and the dates of service and describe your role.

Judicial Law Clerk, Arizona Supreme Court, Hon. Justice Frederick Martone, 1992-93 Term

I served as a law clerk to Justice Martone during his first full year on the Arizona Supreme Court. The clerkship was a one-year appointment. During that period, Hon. Stanley Feldman (Chief Justice), Hon. Thomas Zlacket (Vice Chief Justice), Hon. Robert Corcoran and Hon. James Moeller were also on the Court. I assisted Justice Martone with legal research, analysis and drafting of opinions, as well as evaluation of Petitions for Review filed with the Court.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

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3 This includes 4 appeals in which I ghost wrote a brief that someone else signed.
4 This was a special action in Superior Court, challenging a Justice Court decision.
5 This was a special action that was filed originally (not as an appeal) in the Arizona Supreme Court.

- **City of Flagstaff v. State of Arizona**, Superior Court of Arizona, Maricopa County, No. CV2021-011210

  1. Date: The City of Flagstaff filed this lawsuit in July 2021. It was finally resolved in May 2024 when the trial court entered final judgment in favor of Flagstaff.

  2. Courts: Superior Court of Arizona, Maricopa County, Hon. James D. Smith and Hon. Timothy J. Ryan; Arizona Court of Appeals Division 1.

  3. Counsel: See attached.

  4. Summary:

     In 2006, voters passed Proposition 202, the "Raise the Minimum Wage for Working Arizonans Act," which is codified at A.R.S. §§ 23-362 through 23-364. Among other things, the Act authorizes local jurisdictions to adopt a local minimum wage higher than the State minimum wage, which local minimum wage does not, however, apply to the State and its employees. The Legislature, in 2019, adopted a new statute, A.R.S. § 35-121.01, and modified an existing statute, § 35-113, which had the net effect of allowing the State to levy an assessment on any city that adopts a minimum wage higher than the State's minimum for state costs "attributable to" the higher minimum wage. The assessment is based on the various state agencies' "estimates" of the minimum wage's financial impacts, based on whatever methodology they choose to use.

     In 2021 the Legislature passed a bill under this scheme that assessed the City of Flagstaff $1.1 million. Flagstaff sued, arguing that the assessment was inconsistent with the voter-approved minimum wage act and therefore was invalid under the constitutional provisions that protect voter-approved measures. I drafted and filed an amicus brief on behalf of the City of Tucson (which had also adopted a local minimum wage) supporting Flagstaff's position. After the case went up to the court of appeals and came back to the trial court,[6] I drafted and filed another amicus brief along with Nancy Davidson, general counsel for the League of Arizona Cities and Towns, on behalf of the City of Tucson and the League. The Court granted summary judgment in favor of Flagstaff in May 2024.

  5. Significance:

     The statutory assessment scheme required state agencies to estimate the impact on their budget of any minimum wages higher than

6 The case followed a strange path. After Flagstaff obtained a preliminary injunction in the trial court preventing the State from collecting the assessment, the case went to the Court of Appeals, which vacated the preliminary injunction based on its conclusion that the trial court had applied the wrong standards for that form of relief. Despite both parties' requests that the court address the ultimate legal issue in the case—the validity of the assessment scheme—the Court of Appeals declined to do so. The case was returned to the trial court, which then granted Flagstaff's motion for summary judgment.

the State's minimum wage. Because local minimum wages don't apply to the State and its employees, these supposed impacts were so indirect and speculative that the amount of any assessment levied would ultimately be completely arbitrary. It would serve only to punish the local jurisdiction—and its taxpayers—for a local political act expressly authorized by Arizona voters but disfavored by the majority of the Arizona Legislature. The Legislative assessment scheme was ultimately an attack on the rule of law, and the fact that it was defeated is a testament to the importance of the judiciary in protecting the rule of law.

- **Arizona School Boards Association, Inc. v. State of Arizona, 252 Ariz. 219 (2022)**[7]

1. Date: The Complaint in this matter was filed August 12, 2021. The trial court granted declaratory relief in a ruling dated September 27, 2021, and the Arizona Supreme Court entered an order affirming the trial court's judgment on November 2, 2021. The Court issued an opinion January 6, 2022.
2. Courts: Superior Court of Arizona, Maricopa County; Arizona Supreme Court.
3. Counsel: See attached list.
4. Summary:

   This case was imitated by the Arizona School Boards Association along with other organizations and individuals. Plaintiffs sought a declaration that certain provisions of three different bills, and the entirety of another bill, violated the Arizona Constitution's prohibition on "logrolling"—the practice of rolling disparate and unrelated provisions into a single bill, or using a bill title that doesn't provide fair notice of the subject of the bill. The bills, which were titled as "budget reconciliation bills" contained provisions that had nothing to do with the budget or with the rest of the bill; most were controversial Covid-19-related measures restricting the ability of local jurisdictions to take mitigation measures.

   The trial court ruled quickly in Plaintiffs' favor and the case was then submitted to the Arizona Supreme Court, which heard it on an expedited basis. I was the principal drafter of an amicus brief filed with the Court on behalf of the City of Tucson. The Court held oral argument and issued a decision in Plaintiffs' favor on November 2, 2021. It issued an opinion 2 months later.

5. Significance:

   Some of the challenged provisions impacted the City's ability to take public health measures that the City Council deemed necessary for

7 I also drafted and filed an amicus brief in the trial court in a case challenging another bill for similar reasons, which was also successful, City of Phoenix v. State of Arizona, Superior Court of Arizona, Maricopa County, No. CV 2021-012955.

the protection of the public and City employees. But more importantly, as the City of Tucson explained in it's amicus brief, "The core issue here is nothing less than democracy and the rule of law, the defense of which should be the first and most sacred duty of any government. The title requirement in Ariz. Const. art. 4, pt. 2, § 13, and the single-subject requirement that is expressed both in that section and Ariz. Const. art. 4, pt. 2, § 20, safeguard the most basic principle of democracy – that of majority rule. If legislators pass a bill without notice of its contents, because of a faulty title, or pass a multi-subject bill to achieve passage of a desired provision even at the cost of approving something they would otherwise vote against, the members of our society cannot be assured that the resulting laws, by which their conduct is governed, were in fact approved by majority of their elected legislators. This is intolerable in a democratic system."

- **James v. City of Peoria, et al., 253 Ariz. 301 (2022)**

5. Date: Lawsuit was filed in October 2019; Supreme Court decision issued July 2022.
6. Courts: Superior Court of Arizona, Maricopa County, Hon. Theodore Campagnolo; Court of Appeals, Division 1, Hon. Bryan Furuya (author); Arizona Supreme Court
7. Counsel: See attached list.
8. Summary:

A.R.S. § 12-821.01 requires someone with a claim against a public entity or public employee to serve a notice of claim on the responsible entity no later than 180 days after the claim accrues. A claim is barred if the claimant fails to file a timely notice of claim that complies with all statutory requirements, including the facts giving rise to the claim and a specific amount for which the claimant is willing to settle. Subsection E of the statute provides that "[a] claim … filed pursuant to this section is deemed denied sixty days after the filing of the claim unless the claimant is advised of the denial in writing before the expiration of sixty days."

The claimant in this case served a notice of claim that contained a settlement offer that stated that it expired after 30 days. The question that the Supreme Court accepted for review was whether this notice complied with the statute. Because this was a question of great interest to Arizona municipalities, the League of Arizona Cities and Towns, after the Court accepted review, directed its general counsel to file an amicus curiae brief. The time for doing so was very short and General Counsel was going to be out of town for most of it, so she asked me if I would be willing to ghost write the brief. I was happy to do that for a colleague who provides so much valuable assistance to me and all other municipal lawyers in the State. As a result, although the brief bears her name, I was the principal drafter; I have included part of the brief as one of my writing samples.

Unfortunately, from the perspective of our clients, the Supreme Court ultimately held that the claim *did* satisfy the statute.

9. Significance:

The notice of claim statute may at times seem draconian. But it helps preserve the ability of government entities to manage their budgets and the claims filed against them. At the same time, it is important for claimants to have clear guidance on what is required to satisfy the statute so that they don't get tripped up. This case addressed an issue on which there was no controlling law, so it removed an uncertainty in the process and ultimately enhances the ability of claimants to file compliant claims.

- **Rodgers v. Huckelberry, et al, 243 Ariz. 427 (App. 2017)**.

1. Date: This case was filed in 2016. I was the lead lawyer on the case while two portions of it were finally adjudicated, through the trial court and the Court of Appeals.[8] The first portion of the case, which is what I discuss here, was finally adjudicated when the Arizona Supreme Court denied review of the Court of Appeals' decision in favor of Pima County on August 29, 2018.
2. Courts: Superior Court of Arizona, Pima County, Hon. Catherine Woods[9]; Arizona Court of Appeals, Division 2, opinion by the Hon. Peter Eckerstrom; Arizona Supreme Court.
3. Counsel: See attached list.
4. Summary:

This lawsuit was initiated by the Goldwater Institute against Pima County challenging the legality of a transaction that the County entered into with a private company, World View Enterprises, Inc. Plaintiffs argued that the transaction – a lease-sale of County owned property to World View over a term of 20 years – violated the Arizona Constitution's gift clause, violated state law because the lease was not auctioned off under A.R.S. § 11-256, and violated procurement laws because the design and construction contracts were entered into as an emergency noncompetitive procurement.

The leasing-statute issue was adjudicated first and I drafted the County's motion for summary judgment on this issue and responded to Plaintiff's motion for summary judgment. The trial court, Hon. Catherine Woods, entered summary judgment in favor of Plaintiffs but the County

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8 I handled the final portion of the case (which was the claim that the transaction violated the Gift Clause of the Arizona Constitution) through a win in the trial court, but I left the County Attorney's Office before the case went up on appeal. Division Two of the Arizona Court of Appeals overturned the trial court's decision on appeal regarding that final aspect of the case.

9 Hon. Paul Tang adjudicated the final part of the case, the Gift Clause issue, in the trial court.

successfully appealed the issue to Division Two of the Court of Appeals. *Rodgers v. Huckelberry*, 243 Ariz. 427 (App. 2017). The Arizona Supreme Court denied the Petition for Review filed by Plaintiffs.

5. Significance:

I assisted Pima County with the drafting of the legal agreements that were challenged in this case, advised the Pima County Board of Supervisors regarding the transaction, and defended the County, with the assistance of Deputy Pima County Attorney Andrew Flagg, when the transaction was challenged.

The leasing of county-owned property is generally governed by A.R.S. § 11-256, which requires the lease to be auctioned off with a minimum bid of 90% of the lease's appraised fair market value. Counties also have authority, under A.R.S. § 11-254.04, to engage in "economic development activities," defined by the statute to include "leasing or conveyance of real … property." At the time that Pima County entered into the World View transaction, no court had addressed whether a county that was entering into a lease-sale of county-owned property for economic development purposes under § 11-254.04 was still required to comply with § 11-256. The Court of Appeals held, in a published opinion, that it is not. Because transactions involving real property are an important mechanism for counties to pursue economic development, this was an important decision for all Arizona counties.

- **Cheatham v. DiCiccio, 240 Ariz. 314 (2016)**

1. Date: opinion issued September 13, 2016
2. Court: Arizona Supreme Court, opinion authored by the Hon. Scott Bales, with the Hon. Joseph Howard sitting by designation in place of Hon. Clint Bolick, who recused himself
3. Counsel: See attached list.
4. Summary:

This was a lawsuit initiated by the Goldwater Institute against the City of Phoenix seeking to invalidate the City's Memorandum of Understanding with the Phoenix Law Enforcement Association, a union benefitting City police officers. Goldwater argued that the City violated the anti-gift clause of the Arizona Constitution by agreeing to allow officers to spend a specified number of hours engaging in union activities during paid work time. The City's position was that this was part of their compensation package for the officers; it was an employee benefit, like health insurance and leave time.

Goldwater won in the trial court and in the Court of Appeals, but ultimately lost in the Arizona Supreme Court, though by a slim margin. Justice Bolick, who had been lead counsel on the case for Goldwater, recused himself, and the Court reached a 3-2 decision. I filed an amicus brief on behalf of the Pima County Board of Supervisors in the Court of

Appeals, and two briefs in the Supreme Court, supporting the City's position.

5. Significance:

This case was not about unions, or the wisdom of paying officers their normal wage while they do work that is for their own benefit. It was about the proper role of the legislative and judicial branches of government. It was about representative democracy and the rule of law.

Winston Churchill purportedly observed that democracy is the worst form of government … except for every other. Decisions about how to allocate the government's financial resources—in this case, how much to spend on compensation for police officers, and how to allocate those funds among wages and various benefits—are quintessentially political in nature. A court should not be afraid to declare that a genuinely arbitrary or discriminatory legislative or executive action is unconstitutional. But neither should that court act as a "super legislature" and invalidate an action taken by a political body within the legitimate scope of its authority simply because that action seems unwise; that is a matter for the voters and their elected representatives to sort out. This case raised the difficult question of where to draw the line between policy and legality.

The Arizona Supreme Court, however, recently reversed course and implicitly overruled its decision in this case in *Gilmore v. Gallego*, 552 P.3d 1084 (Ariz. 2024).

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

I have served as a court-appointed arbitrator for the Pima County Superior Court; see information below.

28. List at least three but not more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

I have arbitrated several cases through the Superior Court arbitration program. They have all involved motor-vehicle accidents. None were particularly

noteworthy, from a jurisprudential perspective. But each was, I'm sure, quite important for the parties involved.

1. Date: January 2019

   Court: Court-Appointed Arbitrator for Pima County Superior Court

   Plaintiff's Counsel: Eric A. Thomson
   (520) 297-6444
   thomsonesq@msn.com

   Defendant's Counsel: Michael S. Woodlock
   (520) 388-4782
   woodlock@gustlaw.com

   Summary:

   Vehicle-accident tort case. Defendant pulled left out of a side street onto Speedway and struck the SunTran bus Plaintiff was driving. I found the Defendant 100% at fault.

2. Date: July 2017

   Court: Court-Appointed Arbitrator for Pima County Superior Court

   Defendant's Counsel: Janet Linton
   (520) 547-1612
   janet@hernandezlintonlaw.com

   Summary:

   Vehicle-accident tort case that involved a 3-car pileup. Plaintiff was in the middle; defendant was the driver of the truck who struck her from the rear. Plaintiff was pro se and had some difficulty presenting her case. I found in her favor, by didn't award all the damages she was claiming.

3. Date: September 2015

   Court: Court-Appointed Arbitrator for Pima County Superior Court

   Plaintiff's Counsel: Brian M. Chase
   (520)477-2767
   brianmchase@gmail.com

   Defendant's Counsel: Lori A. Petersen
   No phone number available.
   loripetersentucson@gmail.com

   Summary:

   Vehicle-accident tort case. Plaintiff was the passenger in a vehicle driven by one defendant, which collided with a vehicle that was turning left in the

Broadway-Wilmot intersection, driven by the other defendant. I found the left-turning driver 90% at fault, and the other 10% at fault.

29. Describe any additional professional experience you would like to bring to the Commission's attention.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? _No_ If so, give details, including dates.

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? _No__ If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

    Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? _not applicable_ If not, give reasons.

32. Have you filed your state or federal income tax returns for all years you were legally required to file them?_No__ If not, explain.

    I believe I failed to final an income tax return for tax year 2003 due to various personal stresses I was dealing with at the time; I owed no taxes.

33. Have you paid all state, federal and local taxes when due? __Yes_ If not, explain.

34. Are there currently any judgments or tax liens outstanding against you? _No__ If so, explain.

35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? __No_ If so, explain.

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? _Yes__ If so, identify the nature of the case, your role, the court, and the ultimate disposition.

    I was named as one of several respondents in a "whistleblower" complaint filed with the State Personnel Board by a disgruntled PCAO employee in December 2011. The details of that matter are described more fully below in response to

question 43. The petitioner in that matter also filed a related public records lawsuit against the County Attorney's Office, in which I was named as one of several defendants. I was dismissed from that lawsuit, as I am not the "custodian" of the County Attorney's records and should not have been named as a party.

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? No If so, explain.

38 Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? _No_ If so, explain.

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? _No_ If so, give details.

40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? _No__

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain. _None

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

Several years ago, the plaintiffs' lawyer in a lawsuit against Pima County (C20180857) accused me, and the other lawyer representing the County in the case, of violating ER 4.4(b) by failing to notify him that we had come into possession of three emails, a memo, and a draft representation agreement that he had authored. ER 4.4(b) requires a lawyer "who receives a document or electronically stored information and knows or reasonably should know that the document or electronically stored information was inadvertently sent" to "promptly notify the sender and preserve the status quo for a reasonable period of time in order to permit the sender to take protective measures." The documents in question had *not* in fact been inadvertently sent, so the rule did not apply. Instead, the documents had been deliberately provided to a management-level employee of Pima County – who then provided them to the County's lawyers – by one of the approximately 425 other Pima County employees to whom the

lawyer had deliberately distributed them, and the court conclusively found that to be true. This did, however, engender an extended and acrimonious controversy that was unfortunately allowed to delay the litigation and increase its associated expense. I am happy to answer any questions about the matter.

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42.

I was one of several individuals named by a disgruntled employee in a "whistleblower" complaint filed with the State Personnel Board in 2011, in which the employee alleged that I—and others named in the complaint—had been guilty of various improprieties in connection with a hiring process that had at that time recently concluded. The employee alleged that the basis for a disciplinary action taken against her at around the same time was pretextual and that it was really in retaliation for her alleged complaints about the hiring process. The hearing officer in this matter found that the employee never made a written disclosure as required under the law; the employee was appropriately disciplined for her own misconduct; there was no impropriety in the hiring process; there was no reason to conclude that the hiring process raised any matter of public concern; and there was absolutely no connection between the employee's allegations and the discipline she received. The Personnel Board adopted those findings and conclusions.

44. List and describe any sanctions imposed upon you by any court. None

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? _No__ If so, in each case, state in detail the circumstances and the outcome.

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? __No_ If your answer is "Yes," explain in detail.

47. Within the last five years, have you been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? __No__ If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.

48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? _No__ If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you

submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? _No__ If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

PROFESSIONAL AND PUBLIC SERVICE

50. Have you published any legal or non-legal books or articles? _Yes__ If so, list with the citations and dates.

Bankruptcy Code § 1322(b)(2)'s No-Modification Clause: Who Does it Protect?, Arizona Law Review 33, 979 (1991)

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? _Yes_ If not, explain.

52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? _Yes_ If so, describe.

- CLE Moderator and Panel Member, American Bar Association Government & Public Sector Lawyer's Division, How to Improve your Legal Writing, October 2024
- CLE Panel Member, State Bar of Arizona 2022 Convention, Ethics Game Show, June 2022
- CLE Presentation, AWLA, Lawyer Ethics in Arizona: Our Changing Landscape, May 2022
- CLE Presentation, Morris K. Udall Inn of Court, New Ethics Opinions and Trends, April 2022
- CLE Panel Member, State Bar of Arizona 2021 Convention, T-20 Ethical Guidance, June 2021
- CLE Moderator and Panel Member, ABA GPSLD Virtual Skills Conference, Legal Writing, June 2021
- CLE Panel Member, Arizona City Attorney's Association, Arizona Gift Clause, May 2021

- CLE Panel Member, Cross-Border Regulation of the Unauthorized Practice of Law, National Organization of Bar Counsel annual conference, San Francisco, August 2019
- CLE Presentation, *State Bar Professionalism Course* (discussion leader only), July 2022, October 2021, March 2018; October 2016; March 2012; and October 2011, all in Tucson
- ABA Skills seminar, Washington D.C., August 2018
- CLE Presentation, *Arizona's Gift Clause & Economic Development*, Prescott, AZ, May 2017
- CLE Presentation, *Logic for Lawyers*, Prescott, AZ, May 2016
- Chaired and participated in CLE Presentations by Public Lawyers Section at SBA Annual Conventions, June 2013 and June 2014
- CLE Presentation, *Government Real Property 201*, May 2014, Prescott, AZ
- CLE Presentation, *Ethics for Public Lawyers*, April 19, 2012, Phoenix, AZ
- CLE Presentation, *State Bar Professionalism Course* (discussion leader only), July 2022, October 2021, March 2018; October 2016; March 2012; and October 2011, all in Tucson
- CLE Presentation, *Real Property 101 for the Non-Real-Estate Attorney*, May 8, 2008, Prescott
- CLE Presentation, *Arizona Law of Easements*, March 2008, Tucson
- CLE Presentation, *Government Real Property*, December 12, 2007, Tucson
- CLE Presentation, *Real Property Due Diligence*, May 9, 2007, Prescott
- CLE Presentation, *Who is the Client for the Public Attorney?*, May 10, 2006, Prescott

53. List memberships and activities in professional organizations, including offices held and dates.

- Fellow, American Bar Foundation
- Member, American Bar Association
- Member, State Bar of Arizona
- Member, Pima County Bar Association
- Member, Arizona Women Lawyer's Association

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar?

- Current Member, APAAC Task Force Drafting Ethics Manual for Government Lawyers
- Current member of the CLE Committee for the American Bar Association's Center for Professional Responsibility

- Current and former member of Executive Council of the ABA Government and Public Sector Lawyers Division
- Past member and chair of State Bar of Arizona Public Lawyers Section
- Served as an ABA division advisor to the Uniform Law Commission's Study Committee regarding amendments to the Uniform Conservation Easement Act
- I was very active in the State Civil Deputies group while I was a Deputy Pima County Attorney. This is an informal association of public civil lawyers from counties and municipalities throughout the state who work together on legal, ethical and administrative issues for government lawyers.

Court (not Bar) programs:

- Arizona Supreme Court Task Force on Ethics Rules Governing the State Attorney General, County Attorneys, and Other Public Lawyers: though not a member of the task force, I actively assisted the task force by submitting written materials, attending meetings, and serving as the proxy for various task force members in approximately half the meetings
- Arizona Supreme Court Ethics Advisory Committee: Member from its inception at the beginning of 2019 through 2023
- Twice participated in the Judicial Review process for the Pima County Superior Court

Constitutional Commission:

- Member, Arizona Commission on Judicial Conduct, 2023 to present

List any offices held in bar associations or on bar committees. Provide information about activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

- Past Chair of Executive Council, Public Lawyers Section, State Bar of Arizona
- While at the County Attorney's Office, I have participated in the Bar's Wills-for-Heros program.
- While in private practice, I represented a number of clients on a pro bono basis, helping them form non-profit tax-exempt organizations. In addition to creating the corporate entity, I educated the client about on-going corporate compliance issues, and helped the client apply to the IRS for a tax-exempt status determination.

54. Describe the nature and dates of any relevant community or public service you have performed. Honorary Commander, 309th Aerospace Maintenance and Regeneration Group, 2021 to October 2024

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

2024 State Bar of Arizona Member of the Year Award

2024-25 Honored Listee, Marquis Who's Who

2015 Distinguished Public Lawyer Award, State Bar of Arizona Public Lawyer's Section

Arizona Open Land Trust Award for Contributions to Open Space Preservation

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates. None; I have never run for office

Have you ever been removed or resigned from office before your term expired? _not applicable_ If so, explain.

Have you voted in all general elections held during the last 10 years? __No_ If not, explain. I believe I failed to vote in a couple local elections during that period of time, either because I had to be unexpectedly absent on election day or was unable to make it to the polling place on time.

57. Describe any interests outside the practice of law that you would like to bring to the Commission's attention. I'll mention a few things about myself just to provide a little insight into who I am, though none of this is directly relevant to serving as an appellate judge. I am the proud mother of three sons, and I do have many interests outside the practice of law, including reading, cooking, paper flower art, and various needle arts. (Making paper flowers doesn't sound terribly impressive, but I have made the flowers for three different weddings and people are always astonished when they see the pictures.) I'm a bit of a geek; I even attended a Star Trek convention a number of (maybe 15?) years ago wearing an original-series-science-officer uniform that I made myself. Every year I completely redecorate my house for Halloween and host a Halloween party. And every day I complete the NYT Wordle, Connections, Letter Boxed, and The Mini puzzles. I do not do the NYT crossword puzzle, unlike my amazing grandmother, who did it every day for many years. In ink.

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? _Yes_

ADDITIONAL INFORMATION

59. The Arizona Constitution requires the Commission to consider the diversity of the state's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration. None

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

One of my undergraduate majors was philosophy, and I took introductory and advanced classes in logic. It was, I think, good preparation for the practice of law. It taught me to recognize fallacies and sloppy reasoning, avoid inconsistencies and result-driven logic, and look beyond the immediate situation or question to identify the broader implications and potential unintended consequences of a particular line of reasoning. It also taught me that the way to reach the best solution to a problem is to discuss and debate the relative merits of various potential solutions with other smart people.

At the same time, I have always, throughout my legal career, taken a common-sense approach to solving problems in a way that makes sense in the real world. As a lawyer, I help my clients understand the law and what it requires of them in the here-and-now; I read, synthesize, and analyze the relevant legal authorities, whether those are statutes, regulations, or caselaw, and help my clients assess, realistically, the risks and benefits of alternative courses of action.

And that, it seems to me, is what an appellate judge needs to be able to do and do well: engage, along with one's colleagues, in complex legal analysis without getting lost in esoterica; resolve the issues in a practical way; and explain rulings in a clear manner that helps litigants understand their case outcomes and *also* allows legal professionals to understand and apply the law to future situations.

I hope I will be given the opportunity to do that before my career is over.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept

assignment to any court location? _To the extent applicable here, yes. If not, explain.

62. Attach a brief statement explaining why you are seeking this position. See attached.

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website. See attached

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than three written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than ten pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website. See attached

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews. NOT APPLICABLE

Question 15, list of partners and associates from last five years:

Current:
Michael Rankin
Chris Avery
Damian Fellows
Piroshka Glinsky
Shilpa Hunter-Patel
Roi Lusk
Dennis P. McLaughlin
Sara Pace
Michelle Saavedra
Jennifer Stash
Andrew Sterling
Stacey Roseberry
Jennifer Bonham
Rebecca Cassen
Antonio Zapata
Shelley Tolman

Former (City Attorney's Office:
Julianne Hughes
Gioia Sanderson
Renee Waters

Former (County Attorney's Office):

Acosta, Malena Maria
Allen, Caroline Sakura
Amlee, Jeffery
Anderson, Beth Ann
Anderson, John G.
Araneta, Michelle C.
Ashton, Matthew
Aspacher, (Virginia) Dawn
Berkman, David
Blum, Jennifer
Brandes, Lewis
Brown, Ellen Ridge
Burstein, Barbara
Cardy, Dale H.
Chalk, Bruce H.
Chamblee, Michelle
Collins, Lacee Nicole
Colmenero, Michael A.
Conatser, Chang, Soo Y.
Cramer, Amelia
Crosby, Kara J.
Daranyi, Ian Michael
Davis, Nancy
Deakin (Pylipow), Lauren
Dent, Jennifer
Diebolt, Mark T.
Duncan, Lyndsey
Edgett, John
Ehredt, Amanda Renee
Eklund, Matthew P.
Enderle, (Schneider), Ashley C.
Farkas, Mary
Flagg, Andrew
Friar, Karen
Gannon, Jason
Gant, Ryan
George, Vincent
Goodwin, Alan
Green, Nicol
Greene, Baird
Holguin, Sean E.
Holley, April Elizabeth
Hotchkiss, Mark
Houston, David A.
Jensen, Barbara Noelle
Jurkowitz, Daniel S.
Kaiserman, Julia
Kneup, Nicolette
Kramer, Courtney Leigh
Krejci, Kevin S.
Krula, David
Lauritzen, Paul G.
LaWall, Barbara
LeBlanc, Michael D.
Leonardo, Suzette Marquez
Levine, Sara
Lines, Jacob
Lukach, Lesley M.
McCray, Matthew
Miller, Teresa (Tracy)
Mosher, Heather A.
Mosher, Jonathan C.
Olson Chi, Bunkye
Olson, Kelli L.

Ore, Katheryn
Otto, Victoria
Pascoe, William F.
Pinkney-Baird, Jonathan L
Porterfield, Donald
Prudence, Sydeny
Rappaport, James
Resare, Christopher
Resare, Michael Benjamin
Ricard, Joel Joseph
Ricks, Joseph Hancock
Rizzi, Dominic James
Roubicek, Laura
Ruesch, Gabrielle Y.
Ruskin, Amy
Schmidt, Ryan
Schwartz, Robin
South, Daniel B.
Steele, Brett Michael
Straub, Christopher
Summers, Tai Audra
Tangren, David
Taylor, Jonathan Craig
Tom, Tiffany
Townsend, Geoffery Ryan
Unklesbay, Rick
Wadman, Jeff
Ward, Christopher
Watters, Caitlin Day
Weaver, Thomas
Weigold, Hayley
Werlin, (Falzone) Patrice Michele
Wesselhoft, Charles

Question 22, list of counsel involved in cases:

- **Tucson Police Officers Association, et. al. v. City of Tucson et. al.**
  For Plaintiffs:
  Marchetti Wood
  Brian Marchetti
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- **Pima County, et al., v. Arizona Property Tax Oversight Committee, CV2015-009739**

  Outside counsel for Pima County:

  Ballard Spahr

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  For Defendants:

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- ***Marana v. Pima County*, 230 Ariz. 142 (App. 2012)**

  For Town of Marana:

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  Marana Town Attorney's Office

  Frank J. Cassidy, Town Attorney (now retired)
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  (520)260-7908

Question 26, list of counsel involved in cases:

- **City of Flagstaff v. State of Arizona**, Superior Court of Arizona, Maricopa County, No. CV2021-011210

  For City of Flagstaff:

  Coppersmith Brockelman PLC

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- **Arizona School Boards Association, Inc. v. State of Arizona, 252 Ariz. 219 (2022)**

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- **James v. City of Peoria, et al., 253 Ariz. 301 (2022)**

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Attorney for Amicus Curiae League of Arizona Cities and Towns:

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- **Rodgers v. Huckelberry, et al**.

For Plaintiffs:

Goldwater Institute

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Jonathan Riches
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For Defendants:

Pima County Attorney's Office

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- **Cheatham v. DiCiccio, 240 Ariz. 314 (2016)**

For Plaintiffs:

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For City of Phoenix:

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For Amicus Curiae PORAC Legal Defense Fund:

Knapp & Roberts, P.C.

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For Amicus Curiae National Fraternal Order of Police:

Yen Pilch Robaina & Kresin

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Crabbe, Brown & James, LLP, Columbus, OH

Larry H. James
No current contact information

For Amicus Curiae Pacific Legal Foundation:

Pacific Legal Foundation, Sacramento, CA

James S. Burling
No current contact information

For Amici Curiae United Phoenix Firefighters Association, Local 493, Professional Fire Fighters of Arizona, and International Association of Fire Fighters:

Coppersmith Brockelman PLC

Roopali H. Desai (now Hon. Roopali Desai, Ninth Circuit Court of Appeals)

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For Amicus Curiae National Association of Police Organizations:

Ward, Keenan & Barrett, P.C.

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Question 62 Statement of Interest

I have, since law school, wanted to become—eventually—an appellate judge. I have wanted it for reasons that, I suspect, are common to anyone who feels called to a particular occupation. I love the work involved, I care passionately about it being done well, and I am convinced that I could do it very well indeed.

I love the law. I find it fascinating. I love engaging in legal analysis, debating with colleagues the merits of potential solutions to a legal question to find the best one, and explaining the chosen solution in a clear, easy-to-follow, and easy-to-replicate way. I believe I am good at that, though I continuously try to get even better.

More importantly, I respect and believe fervently in the rule of law. Service on the appellate bench would allow me to apply my skills in a new and endlessly challenging way; and, in doing so, to directly further the rule of law and the preservation of a just and ordered society. I can think of no pursuit that would be more satisfying and enjoyable for me personally, no greater good to which I could more meaningfully contribute, and no public service I could more skillfully render.

The rule of law matters. The truth matters. The ability and willingness to recognize what is ethical and right and to act accordingly – even when it is hard, even when it hurts, even when one is attacked for it – matters. The judiciary must be willing and able to correctly interpret and apply the law, uninfluenced by politics and prejudices. Appellate courts must be able to articulate legal principals and statutory interpretations in a way that is logical and understandable and can be applied to future cases. I can do those things, and I would be honored to be given the chance to do so.

And finally, at a deeply personal level, I want to know at the end of my life that I left a mark somewhere. It doesn't need to be a big one. But I would like to know that I have produced some small lasting good (beyond my sons, who are admittedly the best and longest-lasting good I have helped produce, but I can take only a tiny bit of credit for them). One well-drafted published appellate decision would be enough. To know that I helped provide binding legal guidance to at least a few lawyers researching a particular legal question; to know that I helped make a problem and its solution simpler and cleaner so that those lawyers know what the law is and can save their clients time and money and angst; to know that I furthered the rule of law in this one small way; that would be enough.

Writing Samples in Response to Question 63

This is a portion of the brief that I authored for the League of Arizona Cities and Towns supporting the argument that a notice of claim, to comply with the statute, had to contain a settlement offer that was open for 60 days¡.

The statute at issue:

§ 12-821.01. Authorization of claim against public entity, public school or public employee

A. Persons who have claims against a public entity, public school or a public employee shall file claims ... within one hundred eighty days after the cause of action accrues. The claim shall contain ... a specific amount for which the claim can be settled and the facts supporting that amount. Any claim that is not filed within one hundred eighty days after the cause of action accrues is barred and no action may be maintained thereon. ...

...

E. A claim against a public entity or public employee filed pursuant to this section is deemed denied sixty days after the filing of the claim unless the claimant is advised of the denial in writing before the expiration of sixty days.

The appellant in this case, Kizzen James ("**James**"), served on Peoria a letter asserting a claim against the city. It included an offer to settle the claim for a specified amount and stated that the offer was "valid for thirty (30) days from the date of this letter." This did not constitute a notice of claim that satisfies the requirements of A.R.S. § 12-821.01, because that statute requires that the public entity be given 60 days within which to accept the settlement offer and resolve the claim before litigation. Because she filed no valid notice of claim before the deadline, James's claim is barred.

…

ARGUMENT

1. By providing a "deemed denied" date, A.R.S. § 12-821.01 necessarily requires the settlement offer in a valid notice of claim to remain open for 60 days, during which period the public entity can accept or reject the offer before the claimant files a lawsuit.

James notes that § 12-821.01 does not explicitly state that a claimant, to satisfy the statute, must make their settlement offer irrevocable for 60 days or that the claimant cannot file a lawsuit

until the public entity affirmatively rejects the offer or the 60-day period has run. Therefore, she argues, a claimant can revoke their offer and file a lawsuit at any time after filing their claim.

Of course, James filed her lawsuit more than 60 days after she served her letter on the Peoria, so the ability of a claimant to file a lawsuit during the 60-day period following the filing of the notice of claim is not in question in this case. The question is whether a notice of claim containing a settlement offer that is set to expire in less than 60 days satisfies the requirements of § 12-821.01. Regardless, the answer to both of those questions is "no." As the Court of Appeals correctly held in this case, a settlement offer that remains open for less than 60 days is a perfectly valid settlement offer; however, it does not qualify as a valid *notice of claim under the statute.* If it did, § 12-821.01's 60-day "deemed denied" provision would be meaningless.

Under normal contract-law principles, an offeree is under no obligation to accept or affirmatively reject an offer after it is made. *New York Life Ins. Co. v. Lawrence*, 56 Ariz. 28, 35-36 (1940). This does not, however, mean the offer remains forever open and pending, because the offeror – absent an agreement to the contrary, made in exchange for consideration – can withdraw it at any time prior to affirmative acceptance by the offeree. *Richards v. Simpson*, 111 Ariz. 415, 418 (1975). The offeror can also give the offer an expiration date, as James did in this case, by stating that the offer will end automatically after some specified period of time; even then, however, the offeror can revoke the offer before the stated time.

Logically, therefore, the only reason to require an offeree to either accept or reject an offer before a specified deadline is if, contrary to the usual rule, the offer is irrevocable. That is what § 12-821.01 does – it requires the claimant to make a settlement offer that it cannot revoke. The statute sets the "deemed denied" date to ensure that a public body's failure to affirmatively respond to the claim doesn't cause the offer to go into a perpetual state of limbo. Instead, the offer is deemed

rejected after 60 days. If, as James argues, the claimant can revoke the offer and sue at any time, then the "deemed denied" date in the statute does nothing *because no rejection by the public entity would ever be logically or legally necessary.*

That bears repeating. There is no reason to set a date by which an offer is "deemed denied" by the public entity if none of the claimant's rights are dependent on such a rejection. Period. Because words in a statute are presumed to be meaningful and not "mere surplusage," *Nicaise v. Sundaram*, 245 Ariz. 566, 568, ¶ 11 (2019), this means the public entity's denial of the claim must be necessary to end the offer and permit the claimant to sue.

This has long been the understanding regarding § 12-821.01's purpose and effect – it gives the public entity 60 days to evaluate the claim and, if appropriate, resolve it, before being sued. *See* *Falcon ex rel. Sandoval v. Maricopa County*, 213 Ariz. 525, 527, ¶ 9 (2006) (purpose of claims statute is "to permit the possibility of settlement prior to litigation"); *Backus v. State*, 220 Ariz. 101, 104, ¶ 10 (2009) ("one of the goals of § 12–821.01" is "to encourage public entities and claimants to resolve claims without resorting to litigation."); *Drew v. Prescott Unified Sch. Dist., 233 Ariz. 522, 526*, ¶ 15 (App. 2013) ("the statute's purposes include allowing public entities and employees the opportunity to realistically and meaningfully investigate and assess a claim, and determine whether to settle and possibly avoid litigation altogether."); *Martineau v. Maricopa County*, 207 Ariz. 332, 335–36, ¶ 19 (App. 2004) (purpose of claims statute is to allow "the public entity to investigate and assess liability, to permit the possibility of settlement prior to litigation, and to assist the public entity in financial planning and budgeting"); *Crum v. Superior Court*, 186 Ariz. 351, 352 (App. 1996) (compliance with notice-of-claim statute is a "prerequisite to filing suit against a public employee or public entity").

If the statute does not do that, and the public entity need not be given any time to evaluate the merits of a claim, it is difficult to see what possible purpose the notice-of-claim requirement serves. James asserts that 60 days is not long enough to permit meaningful review of claims anyway. That is certainly true for some claims, those with complex facts and high dollar values. But just because those claims tend to end up in litigation – which means they are the ones with which plaintiffs' lawyers and courts are familiar – most claims are not of that variety. For every complex road-design case involving a multi-million-dollar claim, there are many, many claims for things like vehicle damage caused by potholes. The 60-day notice of claim period allows public entities to make informed decisions about many (if not most) of the claims they get. If they are not provided that opportunity, what point does a notice of claim serve? The offer it contains becomes meaningless if public entities are not assured of some real opportunity to evaluate it.

This is an excerpt from a motion for summary judgement that was filed in *Pima County, et al., v. Arizona Property Tax Oversight Committee*. The motion as a whole was a joint effort by me and outside counsel, but this section is my work. Citations to the Statement of Facts have been removed:

OPENING STATEMENT

The Arizona Legislature has an obligation to "provide for the establishment and maintenance of a general and uniform public school system" (Ariz. Const. art. 11, § 1), and also to provide for a system of property taxation that limits the total primary property taxes levied on residential property to 1% of the property's full cash value (Ariz. Const. art. 9, § 18) (the "Cap"). Continued reliance on local property taxes for school funding puts pressure on local primary property tax rates and makes compliance with the Cap difficult. The Cap is met, under A.R.S. § 15-972(E), by giving residential-property owners a credit against their school-district primary-property-tax levy if the aggregate primary levies for their property exceed the Cap.

Prior to the passage of Senate Bill 1476 ("SB 1476") earlier this year, the State backfilled the resulting reduction to each impacted district's levy by providing "additional state aid for education" ("ASAE"). Section 7 of SB 1476 added § 15-972(K) ("Subsection K"). Under Subsection K, most of that ASAE will no longer be provided to an impacted district by the State, but instead by other local taxing jurisdictions with which that district overlaps. Tucson Unified School District ("TUSD") receives the largest share of this ASAE; it is expected that most of that ASAE will now be provided to TUSD by Pima County. Pinal County, and perhaps some Pinal County municipalities, will probably also have to pay ASAE to certain school districts in that county.

Plaintiffs ask this Court to enter judgment finding that Subsection K, and SB 1476 as a whole, are unconstitutional.

MEMORANDUM OF POINTS AND AUTHORITIES

A tax is a "forced contribution of wealth to meet the public needs of government."

Stewart v. Verde River Irrigation & Power Dist., 49 Ariz. 531, 544 (1937); see also *Weller v. City of Phoenix*, 39 Ariz. 148, 151, 4 P.2d 665, 667 (1931) ("Taxes are generally held to be burdens or impositions laid for purposes of general revenue."); *Hunt v. Callaghan*, 32 Ariz. 235, 239, 257 P. 648, 649 (1927) (A tax is "the enforced contribution of persons and property, levied by authority of the state for the support of the government and for all public needs."). Taxes are therefore imposed jurisdiction-wide on the general public, so that the burden of supporting a government is shared by all those it governs. The State levies taxes statewide for the general support of the state (which includes maintenance of a uniform school system), each county levies a property tax (and in some cases an excise tax) for the general support of the county, and each school district levies a property tax for the general support of that district.

This jurisdiction-wide requirement is important because it ensures that the taxed population, though not identical to the voting population, is generally co-extensive with it, which ensures that the political process to which courts defer in their constitutional analysis, maintains a degree of integrity. Therefore, although taxing decisions are political decisions entitled to considerable judicial deference, due process and equal protection guarantees mean that a government cannot impose a tax beyond its jurisdictional limits. *See, e.g., Norfolk & W. Ry. Co. v. Mo. State Tax Comm'n*, 390 U.S. 317, 325 (1968) ("The taxation of property not located in the taxing State is constitutionally invalid . . . because it denies to the taxpayer the process that is his due."). And, although a government can tax different classes of property, transactions, and income differently, those classes must be defined on some rational, jurisdiction-wide basis. See, e.g., *City of Mesa v. Home Builders Ass'n of Cent. Arizona, Inc*., 111 Ariz. 29, 32, 523 P.2d 57, 60 (1974) (recognizing that constitutionality of tax rests on

reasonableness of classifications used and on not unfairly singling out one group); *City of Glendale v. Betty*, 45 Ariz. 327, 335, 43 P.2d 206, 209 (1935) (excise tax classifications cannot be arbitrary, discriminatory or unreasonable); *Lindsay v. Industrial Comm'n*, 115 Ariz. 254, 256, 564 P.2d 943, 945 (App. 1977).

When a state requires one local jurisdiction to levy a tax for the general support of another, the resulting tax violates these basic requirements. The tax cannot logically be viewed as levied by the local jurisdiction collecting the tax, because that jurisdiction has no discretion regarding the amount of revenue to be collected, or its use by the jurisdiction being funded. If the tax is viewed as a tax of the local jurisdiction that receives and spends the revenue, it violates equal protection and due process guarantees because it is extra-jurisdictional. If it is viewed as a tax by the state, which is the entity determining the amount of the tax and who will pay it, it violates equal protection and due process because it is levied on a class of taxpayers that cannot be defined on a rational statewide basis. *See, e.g., Buse v. Smith*, 247 N.W.2d 141, 153, 155 (Wis. 1976) (noting that "[a] state purpose must be accomplished by state taxation, a county purpose by county taxation" and that "the state cannot compel one school district to levy and collect a tax for the direct benefit of other school districts, or for the sole benefit of the state"); *Tennant v. Sinclair Oil & Gas Co*., 355 P.2d 887, 889-91 (Wyo. 1960) (striking down a statute requiring a property tax to be levied in certain school districts, the proceeds of which were distributed to other districts); *Peterson v. Hancock*, 54 N.W.2d 85, 93 (Neb. 1952) (striking down a statute that required one local jurisdiction to raise money for the sole benefit of another).

That is, in substance, precisely what SB 1476 does. The State is requiring certain local jurisdictions to levy and collect a general tax, not for their own support, but to

satisfy the tax levy of another local jurisdiction; one with which each paying jurisdiction, to some extent, overlaps, but with which it is not co-extensive. Of course, SB 1476 does not do this directly; it contains no language explicitly imposing a new tax or requiring any paying jurisdiction to do so. It simply requires funds, under certain peculiar circumstances, to be transferred from one local jurisdiction to another. Although it may be tempting to avoid the highly political and complicated area of taxation, form cannot be allowed to trump substance here. *Southwest Gas Corp. v. Ariz. Corp. Com'n*, 169 Ariz. 279, 283, 818 P. 2d 714, 718 (App. 1991) ("[T]here must be one final arbiter of what the constitution says and what the law is. That final power and that final responsibility rests upon the courts."). Constitutional protections against legislative excesses must be more than empty shells. The Plaintiffs therefore urge this Court to consider not simply Subsection K's words but its real-world consequences for local jurisdictions and their taxpayers.

The reality is that the monies to make an ASAE payment must come from somewhere. Because a local jurisdiction's general tax levy is the only source of unrestricted general funds controlled by that jurisdiction, "somewhere" is ultimately the pockets of the paying jurisdiction's taxpayers. Yet the governing body of a jurisdiction such as Pima County that is required to collect the necessary revenue has no discretion regarding the amount to be collected, or its use by the funded district; it is therefore not really "levying" that portion of its general tax in any meaningful sense. The legality of Subsection K therefore depends not on the legality of the paying jurisdiction's governing body levying a tax for the purpose of providing funding to another local jurisdiction, but on the legality of the State imposing a tax on the paying jurisdiction's taxpayers to satisfy the property-tax levy of the funded school district. And that is a problem.

Many of Pima County's taxpayers, like Mr. Klinefelter, do not live or own property in TUSD, the school district expected to receive a substantial ASAE payment from Pima County. Yet they will be required to pay taxes that will be transferred to that district to make up for the portion of its own property-tax levy that it cannot collect from its own taxpayers because of the Cap. That means that the district's tax levy is, for all practical purposes, being imposed extra-jurisdictionally on taxpayers who the district could not tax directly. That violates those taxpayers' equal protection and due process rights.

And if the taxes used to fund the ASAE are viewed as a state tax they are unconstitutional because the taxpayers paying those taxes form no rational statewide class. *Ariz. Downs v. Ariz. Horsemen's Found*., 130 Ariz. 550, 555-57, 637 P.2d 1053, 1058-60 (1981), *City of Glendale*, 45 Ariz. at 335, 43 P.2d at 209; Lindsay, 115 Ariz. at 256, 564 P.2d at 945. They are pockets of taxpayers in only two of the State's fifteen counties, who are not distinguished or defined by any characteristics inherent to them or to the taxed property or transactions. And the amount of tax they pay to fund the ASAE payments will vary from county to county and jurisdiction to jurisdiction. The State already levies a uniform primary property tax on all property throughout the state and uses the revenue to fund schools statewide. A.R.S. § 15-994. The taxpayers who fund the ASAE payments are subject to that tax and have the same interest in and receive the same benefits from a public school system as all other State taxpayers, yet they are required to provide additional funding for that system. Had the State imposed a special tax on select groups of taxpayers in Pima and Pinal Counties and used that revenue to make the ASAE payments itself, that would clearly be irrational and unconstitutional; it should not be able to do the same thing by employing a shell game.

Copy of Rulings in Response to Question 64

ARBITRATOR
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ARIZONA SUPERIOR COURT

PIMA COUNTY

[redacted], Cross Claimant, vs. [redacted], Defendants.	No. C20154098 **NOTICE OF DECISION** Hon. Cynthia T. Kuhn

A hearing in this matter was held on the afternoon of July 21, 2017. Cross-claimant [redacted] and defendant [redacted] were present. Mr. [redacted] was represented by Janet Linton of Udall Law Firm, LLP. Ms. [redacted] was unrepresented. Both parties testified at the hearing. In addition to that testimony, the arbitrator considered documentary evidence provided as part of the parties' pre-trial statement, as well as several additional documents submitted by Ms. Linton at the hearing for purposes of rebuttal and impeachment.[1]

[1] Ms. [redacted] had previously submitted two documents to the arbitrator, each of which purported to be a "Statement of Claim." Those statements were neither proper disclosure, nor did they provide legal argument in the form of a motion or a response to a motion, and they were not disclosed to Mr. [redacted] counsel. They were simply statements of Ms. [redacted] version of events, to which she testified at the hearing. Those statements are not proper evidence and have been wholly disregarded by the arbitrator.

This case concerned a three-car accident that occurred on September 25, 2014. Ms. [redacted] testified that [redacted], who was driving a Nissan Murano, braked in response to a traffic light in front of a fire station. Ms. [redacted], who was driving a Honda Odyssey, collided with the back of Ms. [redacted] vehicle. According to Mr. [redacted], who was driving a Toyota Tundra, the vehicle in front of him, which was between him and Ms. [redacted], swerved into another lane to avoid colliding with Ms. [redacted], and he then collided with her minivan. Ms. [redacted] sued both Ms. [redacted] and Mr. [redacted]. This arbitration concerned only Ms. Engelsman's cross-claim against Mr. [redacted].

Ms. [redacted] testified that Ms. [redacted] braked sharply and unexpectedly, that Ms. [redacted] then braked and was able to slow her vehicle enough that, although she impacted Ms. [redacted] vehicle, the force was not severe. Ms. [redacted] testified that Mr. [redacted] then struck the rear of her car much more forcefully and caused a second, more severe, impact between her car and Ms. [redacted]. This second collision jolted her back and forth, injuring her neck. According to Ms. [redacted]an, she was in shock after the accident and didn't feel her injuries were very serious un[redacted]il the next day, when she awoke in severe pain. She testified that she has suffered and continues to suffer neck and back pain as a result of the accident, that this pain caused her to miss many days at work, and that she anticipated that she was shortly to be fired as a result. She made arrangements to have her adult sons help her move to Georgia so she could more easily avail herself of family assistance and support; then she quit her job, and moved in June or July 2015. After 3 months, she began working again, in September 2015. She testified that she had been making $2,000 to $3,000 per month.

Her answers to interrogatories, fairly read, and her testimony at the hearing, indicate that the pain caused by the collision was severe for a number of months, but finally did subside considerably "within one year after the accident." She continues to

have some difficulties with her neck; for example, when looking down to knit. She also testified, however, that she had some pain in her lower back even before the accident, which made sitting at her job difficult. Medical records indicate that she had some arthritis in her lower back. Ms. [redacted] testified that she spoke to her doctor about her neck pain during a pre-scheduled medical appointment on the day after the accident. There is nothing about that in the doctor's notes, but those notes are not detailed. She did not seek medical attention for her injuries until December 2015. Records from a visit on 5/17/2017 document a "fracture dislocation of cervical spine with routine healing." Ms. [redacted] testified that she had no neck pain prior to the 9/25/2014 accident, and has not been in any accidents since then. She seeks lost wages, damages for pain and suffering, certain costs associated with home-remedies and pain management, and moving expenses.

The arbitrator finds that Ms. [redacted] neck was in fact injured as a result of Mr. [redacted] collision with her car. The difficulty in this case is determining how to allocate fault. Every driver has a duty to remain a safe stopping distance behind the vehicle in front of them. Therefore, the person who "rear-ends" someone is normally at fault. And in fact the police report indicates that Ms. [redacted] was cited for her collision with Ms. [redacted] and Mr. [redacted] was cited for his collision with Ms. [redacted] Ms. [redacted] was not cited. But Ms. [redacted] testified, convincingly, that Ms. [redacted] actually braked precipitously, in an unexpected and unsafe manner. The arbitrator therefore finds that she was partially at fault for the initial collision. The arbitrator also finds that the unexpected occurrence of the first collision—the fault for which is shared by Ms. [redacted] and Ms. [redacted]—was partly to blame for the second collision, which caused Ms. [redacted] injuries. Under the circumstances, and based on all the evidence, the arbitrator allocates 75% of the fault for Ms. [redacted] neck injury to Mr. [redacted]

The arbitrator further finds that the injury was painful for months after the accident, and will likely continue to cause some discomfort in the future; that the injury prevented Ms. [redacted] from working, at least for a few weeks; and that she reasonably incurred certain out-of-pocket expenses in order to manage the pain. Her damages consist of $2,500 in lost wages, $1,000 in out-of-pocket expenses, and $7,000 for pain and suffering, for a total of $10,500. 75% of $10,500 is $7,875. The arbitrator therefore finds in favor of Ms. [redacted] and awards her damages in the amount of $7,875.

Within 10 days after the filing of this notice of award, Ms. [redacted] should submit to the arbitrator a proposed form of award, and a verified statement of costs, and simultaneously provide copies to Ms. Linton. (Costs that are recoverable are those listed in A.R.S. § 12-332. They do not include "expenses … incurred for photocopying, facsimiles, shipping and travel expenses." *RS Indus., Inc. v. Candrian*, 240 Ariz. 132, 137, ¶ 16 (App. 2016).)

Dated this 3rd day of August, 2017.

By /s/ Regina L. Nassen
Regina L. Nassen
Arbitrator

Original Electronically Filed August 3, 2017
with the Clerk of the Court.

Copy hand delivered August 3, 2017, to:

Honorable Jeffrey T. Bergin
Presiding Arbitration Judge
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